

NTSB Order No. EA-5146

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 21st day of March, 2005

Docket SE-16848

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on November 4, 2003, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator, finding that respondent had violated 14 C.F.R. 91.103, 91.141, and 91.13(a).<sup>2</sup> We deny the appeal.

<sup>2</sup> Section 91.103 states that a pilot-in-command shall,  
(continued...)

Respondent, his father Grady Goodman, his son Jac Goodman, and a third passenger engaged in a pleasure flight in the vicinity of Gettysburg Battlefield on July 21, 2002. According to the Administrator's complaint, the aircraft (a Cessna 172 owned by Grady Goodman) encroached into prohibited airspace in the area of the Presidential Retreat, Camp David. Two F-16s intercepted, and the Cessna landed. The tower directed the pilot-in-command (PIC) to call the FAA on landing. According to respondent, his father did so, and all parties were interviewed by the Secret Service.

On July 29th, FAA Inspector Carl Kohl called Grady Goodman to discuss the event and possible certificate action. Grady Goodman called respondent, and respondent then called Mr. Kohl. Respondent told Mr. Kohl that he, not his father, had been the PIC. Respondent followed up with a letter to the FAA (Exhibit A-2) in which he reiterated that he was the PIC.

This certificate action followed. Respondent's answer denied that he was PIC. No other challenge to the Administrator's order was included in his answer. According to a letter respondent wrote to the FAA, he initially had assumed the

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before beginning a flight, become familiar with all available information concerning that flight. Section 91.141 prohibits operation of an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions of a Notice to Airmen (NOTAM). Section 91.13(a) prohibits operating an aircraft in a careless or reckless manner so as to endanger the life or property of another.

responsibility because the event had caused his 82-year-old father great distress and panic, and because respondent did not believe they had encroached into prohibited airspace. Prior to the hearing, respondent and counsel for the Administrator agreed that the only issue was whether respondent was the PIC. At the hearing, at which respondent and his son testified in his defense, respondent testified that he later realized the impact a certificate suspension would have on him and no longer was willing to take responsibility for his father's actions.

The law judge affirmed the Administrator's order. He relied heavily on respondent's oral and written admissions prior to the hearing. Although he discussed the possibility that respondent was protecting his father, the law judge ultimately affirmed paragraph 2 of the Administrator's complaint, which alleged that respondent was the PIC.

Respondent sought reconsideration of the law judge's decision. With his reconsideration brief, he included a letter (with a later postscript) from his father to Alabama Congressman Jo Bonner, stating among other things that he, not his son, had been the PIC. The law judge denied reconsideration without mention of the letter.

On appeal, respondent continues to argue that he was not the PIC, and relies on his father's affidavit. He also argues that the Administrator failed to prove that the aircraft actually entered the expanded P-40 airspace.

The appeal must be denied. A number of procedural and

substantive reasons compel this result.

In his answer, respondent denied only one of the Administrator's allegations. He did not deny that the aircraft had intruded into prohibited airspace. He did not deny that the regulatory violations had occurred, only that he was not responsible for them.<sup>3</sup> Before the hearing, he agreed to limit the issue to one: whether he was PIC.<sup>4</sup> Respondent may not now choose to dispute items that he did not challenge prior to and at the hearing, especially when he gives us no good reason or explanation. The Administrator reasonably relied on those concessions in presenting her case. Respondent's repeated concessions on the other items of proof may not now be recanted.

Also, for due process and fairness reasons we will not consider the letter from Grady Goodman submitted after the hearing. The Administrator, as well as respondent, is entitled to due process. No reason has been given why this letter could not have been introduced at the hearing. Indeed, the letter

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<sup>3</sup> Our rules at 49 C.F.R. 821.31(c) provide that failure to deny the truth of any allegation may be deemed an admission of the truth of the allegation not answered.

<sup>4</sup> Shortly before the hearing, the Administrator drafted a letter reflecting the parties' agreement. This letter, Exhibit A-3, indicates that respondent was now denying the regulatory violations set forth in paragraphs 9 and 10 of the complaint as well as denying paragraph 8, which stated that F-16s were involved in the incident - an allegation no one challenged. The difference at this juncture is not material. In admitting the key factual paragraphs of the complaint, i.e., that an expanded Notice to Airmen had been issued (Paragraphs 3-5), and that the aircraft entered prohibited airspace without authorization (Paragraph 7), and without an affirmative defense being found, the regulatory violations are established.

itself suggests it was written before the hearing, although the postscript was notarized a few days after. Moreover, no reason was given why Grady Goodman did not appear at the hearing to testify on his son's behalf and clear up the question of who was the PIC.

Substantively, there is no basis on this record to reverse the law judge's decision that respondent was the PIC. His decision was based primarily on credibility determinations which are within the law judge's special province. See Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there (resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge), and Chirino v. NTSB, 849 F.2d 1525, 1530 (D.C. Cir. 1988) (Board will reverse law judge's finding when witness' testimony is "inherently incredible").

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>5</sup>

ROSENKER, Acting Chairman, and CARMODY, ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

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<sup>5</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).